



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0145; Notice 1]

BHC Investment Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Receipt of Petition

SUMMARY: BHC Investment Corporation (BHC)¹ has determined that certain "Choice" brand reflective warning triangles that BHC distributed to its dealers from June 2011 to August 27, 2012, do not fully comply with paragraph S5.2.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 125 *Warning Devices*. BHC has filed an appropriate report dated August 30, 2012, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), BHC submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of BHC's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency

¹ BHC Investment Corporation is registered under the laws of the state of Delaware, and as the importer of record for the subject noncompliant equipment is treated as a manufacturer of motor vehicle equipment with respect to the subject petition.

decision or other exercise of judgment concerning the merits of the petition.

EQUIPMENT INVOLVED: Affected are approximately 13,305 "Choice" brand reflective warning triangle kits. Each kit includes three warning devices for a total of 39,915 devices. The affected kits were manufactured by Torch Industrial Company, LTD (TORCH) in its plant located in Fujin, China. The affected kits were imported to and distributed in the United States from June 2011 to August 27, 2012 by BHC.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the 39,915² warning devices that BHC no longer controlled at the time it determined that the noncompliance existed.

² BHC's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt BHC as a motor vehicle equipment manufacturer from the notification and recall responsibilities of 49 CFR part 573 for the affected equipment. However, a decision on this petition cannot relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant motor vehicle equipment under their control after BHC notified them that the subject noncompliance existed.

RULED TEXT: Paragraph S5.2.3 of FMVSS No. 125 requires in pertinent part:

S5.2.3 Each face of the triangular portion of the warning device shall have an outer border of red reflex reflective material of uniform width and not less than 0.75 and not more than 1.75 inches wide, and an inner border of orange fluorescent material of uniform width and not less than 1.25 and not more than 1.30 inches wide...

SUMMARY OF BHC'S ANALYSES: BHC explains that the only noncompliance that it has confirmed is that the measurement of the inner orange fluorescent material is only 1.23 inches versus 1.25 inches required by paragraph S5.2.3 of FMVSS No. 125. The other discrepancies alleged in the competitor's notice cannot be verified without supplying samples to an independent testing laboratory and having them tested and confirmed. Therefore BHC decided to suspend sales of the warning triangles produced by TORCH.

BHC stated its belief that the minor discrepancy between the measurements of the orange material and the luminance tests result has an inconsequential effect on motor vehicle safety. The competitor's test results also makes claims regarding whether the Torch triangles meet the FMVSS No. 125 with regard to stability and reflectivity. BHC has not independently verify these allegations.

BHC stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The triangles are not an integral part of vehicle operation, and are limited to use as a visual warning to passing motorists of a roadside incident.
2. Under FMVSS No. 125, a minimum of 1.25 inches of orange fluorescent material (see page 18 of Industrial Testing Laboratory test report number 120320-05C) must be present. Based on the laboratory testing results and BHC's own measurements, the Choice triangles' reflective material has been measured as 1.23 inches, a difference inconsequential to vehicle safety.
3. The competitor's testing results allege that the reflectivity and stability of the Choice triangles failed to meet NHTSA standards by similarly small margins, which do not present a material safety risk to vehicle operations. Although BHC has not independently verified the competitor's testing results, it has discontinued selling this item.
4. BHC has received no reports from any dealer or end use purchaser of the Choice triangle kits of any failure of these products, accidents, injuries, or other incidents allegedly related to the suspected non-compliance.

5. BHC believes that any recall campaign would be ineffective. BHC is in the process of notifying its approximately 300 dealers of the issue, and has offered to replace any unsold stock with DOT-compliant products. Based on our best information, BHC believes that the retailers of these products generally do not maintain records on end-use purchasers. BHC cannot identify effective point-of-sale or public notice strategies that would effectively notify and remedy the suspected noncompliance.

BHC also, believes that the combination of minor and inconsequential suspected deviations from the DOT standard, the lack of any report of actual failure of the products in the field, and the problems faced in formulating an effective recall program are sufficient to support the granting of this petition. BHC hopes that this application and attached materials fully illustrate the seriousness with which BHC has taken this matter, including the immediate cessation of sales, attempts to verify the suspected deficiencies, and replacement of unsold stock with compliant equipment. BHC believes that such steps are a reasonable and satisfactory step for an importer in this position, and that a recall campaign

would produce no marginal benefit in terms of vehicle safety.

In summation, BHC believes that the described noncompliance of its equipment is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

COMMENTS: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and must be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) website at <http://www.regulations.gov/>.

Follow the online instructions for submitting comments.

Comments may also be faxed to 1-202-493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <http://www.regulations.gov> by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the Federal Register published on April 11, 2000, (65 FR 19477-78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent

possible. When the petition is granted or denied, notice of the decision will be published in the Federal Register pursuant to the authority indicated below.

COMMENT CLOSING DATE: (insert date 30 days after Publication Date).

AUTHORITY: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

ISSUED ON: July 2, 2013.

Claude H. Harris, Director
Office of Vehicle Safety Compliance

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